

Sam Melvin and Sons, Inc. and Local 522, International Brotherhood of Teamsters, AFL-CIO.<sup>1</sup>  
Cases 29-CA-15667 and 29-CA-15711

January 30, 1992

### DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

Upon charges filed by the Union on April 9<sup>2</sup> and May 6, 1991,<sup>3</sup> the General Counsel of the National Labor Relations Board issued a consolidated complaint against Sam Melvin and Sons, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charges, amended charge, and the consolidated complaint, the Respondent has failed to file an answer.

On November 20, 1991, the General Counsel filed a Motion for Summary Judgement Where Respondent has Failed to File an Answer, with exhibits attached. On November 26, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

#### Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations of a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The consolidated complaint states that unless an answer is filed within 14 days of service "all the allegations in the Consolidated Complaint shall be admitted by it to be true and may be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the counsel for the General Counsel sent the Respondent a letter by certified mail on October 29, 1991, noting that an answer to the consolidated complaint had not yet been received and that unless an answer was received by the close of business on November 5, 1991, a Motion for Summary Judgment would be filed. The Respondent has failed to file an answer.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment. On the entire record, the Board makes the following

### FINDINGS OF FACT

#### I. JURISDICTION

The Respondent, a New York corporation with an office and place of business in Brooklyn, New York, has been engaged in the retail sale of lumber and related products. During the 12 months preceding the issuance of the consolidated complaint, the Respondent, in the course and conduct of its business operations, derived gross revenues in excess of \$500,000 and purchased and received at its Brooklyn facility products, goods, and materials valued in excess of \$50,000 directly from points located outside the State of New York. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

#### II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees of the Respondent, excluding office clerical employees, guards, watchmen and supervisors as defined in the Act.

Since approximately January 15, 1988, the Union has been the exclusive bargaining representative of the unit employees, and the Respondent has recognized the Union as the unit employees' exclusive bargaining representative. Such recognition has been embodied in a collective-bargaining agreement which was effective by its terms for the period from January 15, 1988, to January 14, 1991. Since January 15, 1988, the Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of the employees in the unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

The collective-bargaining agreement provides, inter alia, that the Respondent remit to the Union each month dues deducted from the wages of unit employees pursuant to checkoff authorizations and to remit to the Union's welfare fund each month contributions for unit employees. Since about October 11, 1990, and continuing until the contractual expiration date on January 14, 1991, the Respond-

<sup>1</sup> The name of the Charging Party has been changed to reflect the new official name of the International Union.

<sup>2</sup> Case 29-CA-15667.

<sup>3</sup> Case 29-CA-15711 as amended on June 27, 1991.

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#### II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees of the Respondent, excluding office clerical employees, guards, watchmen and supervisors as defined in the Act.

Since approximately January 15, 1988, the Union has been the exclusive bargaining representative of the unit employees, and the Respondent has recognized the Union as the unit employees' exclusive bargaining representative. Such recognition has been embodied in a collective-bargaining agreement which was effective by its terms for the period from January 15, 1988, to January 14, 1991. Since January 15, 1988, the Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of the employees in the unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

The collective-bargaining agreement provides, inter alia, that the Respondent remit to the Union each month dues deducted from the wages of unit employees pursuant to checkoff authorizations and to remit to the Union's welfare fund each month contributions for unit employees. Since about October 11, 1990, and continuing until the contractual expiration date on January 14, 1991, the Respond-

ent has failed and refused to remit to the Union the monthly dues deducted from the wages of the unit employees. Since about April 1, 1991, the Respondent has failed and refused to remit the monthly contributions to the Union's welfare fund for unit employees. The Respondent has engaged in this conduct without prior notice to the Union and without having afforded the Union an opportunity to negotiate and bargain as the exclusive representative of the Respondent's unit employees with respect to these acts and the effects of these acts.

We find that, by the acts and conduct described above, the Respondent has failed and refused, and is failing and refusing, to bargain collectively and in good faith with the representative of its employees, and thereby engaged in, and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

#### CONCLUSIONS OF LAW

By failing and refusing from October 11, 1990, until the expiration of the collective-bargaining agreement on January 14, 1991, to remit to the Union the monthly dues deducted from the wages of its unit employees and by failing and refusing since April 1, 1991, to remit to the Union's welfare fund the monthly contributions for its unit employees, the Respondent has failed and refused, and is failing and refusing, to bargain collectively and in good faith with the representative of its employees and has engaged in unfair practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to comply with the collective-bargaining agreement by remitting to the Union the monthly dues it deducted from the wages of unit employees from October 11, 1990, until the expiration of the contract on January 14, 1991, with interest. We shall further order the Respondent to comply with the collective-bargaining agreement by remitting to the Union's welfare fund the monthly contributions for its unit employees that were unlawfully withheld since April 1, 1991, with interest,<sup>4</sup> and to make whole all affected unit

<sup>4</sup> Because the provisions of employee benefit fund agreements are variable and complex, the Board does not provide at the adjudicatory stage of the proceeding for the addition of interest at a fixed rate on unlawfully withheld fund payments. Any additional amounts owed with respect to the funds will be determined in accordance with the procedure set forth in *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).

employees for any losses incurred by virtue of its failure to remit such contributions. *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981). This shall include reimbursing employees for any contributions they themselves may have made, with interest, for the maintenance of the welfare fund after the Respondent ceased making the welfare fund contributions. *Concord Metal*, 295 NLRB No. 94, slip op. at 8-9 (June 30, 1989). Interest on any money due and owing employees shall be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

#### ORDER

The National Labor Relations Board orders that the Respondent, Sam Melvin and Sons, Inc., Brooklyn, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain in good faith with Local 522, International Brotherhood of Teamsters, AFL-CIO by failing to comply with the terms of its collective-bargaining agreement with the Union requiring the remittance to the Union of monthly dues deducted from the wages of unit employees and the remittance to the Union's welfare fund of monthly contributions for unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Comply with the collective-bargaining agreement effective by its terms from January 15, 1988, to January 14, 1991, by remitting to the Union the monthly dues it deducted from the wages of unit employees and remitting to the Union's welfare fund monthly contributions for unit employees, in the manner set forth in the remedy section of this decision.

(b) Make the unit employees whole, with interest, for any loss of benefits they may have suffered because of the Respondent's failure to comply with the terms of its collective-bargaining agreement with the Union, in the manner set forth in the remedy section of this decision.

(c) Post at its facility in Brooklyn, New York, copies of the attached notice marked "Appendix."<sup>5</sup>

<sup>5</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

#### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain in good faith with Local 522, International Brotherhood of Teamsters, AFL-CIO by failing to comply with our collective-bargaining agreement with the

Union requiring the remittance to the Union of monthly dues deducted from the wages of our employees and the remittance to the Union's welfare fund of monthly contributions for our employees in the following appropriate unit for the purpose of collective bargaining:

All our employees, excluding office clerical employees, guards, watchmen and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL comply with the collective-bargaining agreement effective by its terms from January 15, 1988, to January 14, 1991, by remitting to the Union, with interest, monthly dues that were deducted from the wages of unit employees and remitting to the Union's welfare fund monthly contributions for unit employees.

WE WILL make our unit employees whole, with interest, for any loss of benefits directly attributable to our failure to comply with the terms of our collective-bargaining agreement with the Union.

SAM MELVIN AND SONS, INC.